

MCC:JJT:mel:2001V00126

(50)  
9/27/01  
KFUNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:	
Plaintiff	:	
	:	
V.	:	Civil No. 1:CV-00-2143
	:	(McClure, J.)
JAKE MENDEZ;	:	(Blewitt, M.J.)
JESUS "JESSE" GONZALEZ;	:	
JAMES "JIMMY" SCARBOROUGH; and	:	
KELLY M. KEISER,	:	
Defendants	:	

FILED  
WILLIAMSPORT, PA

SEP 27 2001

MARY E. D'ANDREA, CLERK  
Per KF  
DEPUTY CLERKDEFENDANTS' BRIEF IN SUPPORT  
OF THEIR MOTION TO DEPOSE PLAINTIFFI. Procedural History

Plaintiff is John Charles Kenney, an inmate incarcerated at the Allenwood United States Penitentiary in White Deer, Pennsylvania ("USP Allenwood"). On December 12, 2000, Kenney filed a Bivens complaint alleging his rights were violated by the defendants.

On April 13, 2001, the case was stayed, until further order of court, pending completion of Kenney's criminal trial. On June 4, 2001, the defendants notified the Court of the trial's conclusion.

In an Order issued on August 10, 2001, defendants were directed to file a responsive pleading. An answer to the complaint was filed on September 7, 2001. Defendants have filed a motion seeking leave to depose the inmate plaintiff pursuant to

Fed. R. Civ. P. 30(a)(2). This brief is submitted in support of that motion in accordance with M.D. Pa. Local Rule 7.5.

**II. Question Presented**

Should defendants be granted leave to depose the inmate plaintiff?

**III. Argument**

**DEFENDANTS SHOULD BE GRANTED LEAVE TO DEPOSE THE INMATE PLAINTIFF.**

Pursuant to Fed. R. Civ. P. 30(a)(2), "[a] party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison. . . ." The plaintiff is confined in prison and, therefore, defendants request that the Court grant them leave to depose Kenney.

In that Kenney is the plaintiff, he obviously possesses relevant knowledge about the allegations in the complaint and the injuries and damages he claims to have suffered. By deposing plaintiff, defendants will be able either to present a motion for summary judgment based on the disputed facts or to appropriately prepare for trial so they and their counsel can address the issues and facts concisely and cogently. See Miller v. Bluff, 131 F.R.D. 698, 700 (M.D. Pa. 1990) (concluding that "[t]he plaintiff himself started this lawsuit and any defendant surely is entitled to take his deposition in conjunction therewith").

Accordingly, in order to prepare a dispositive motion and/or for trial, defendants request leave to depose the plaintiff inmate.

IV. Conclusion

For the reasons stated above, defendants request this Court to grant their motion to depose the inmate plaintiff.

Respectfully submitted,

MARTIN C. CARLSON  
United States Attorney

*Joseph J. Terz*  
JOSEPH J. TERZ  
Assistant U.S. Attorney  
MICHELE E. LINCALIS  
Paralegal Specialist  
316 Federal Building  
240 West Third Street  
Williamsport, PA 17703

Date: September 27, 2001

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:
Plaintiff	:
	:
v.	:
	Civil No. 1:CV-00-2143
JAKE MENDEZ;	:
JESUS "JESSE" GONZALEZ;	:
JAMES "JIMMY" SCARBOROUGH; and	:
KELLY M. KEISER,	:
Defendants	:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 27<sup>th</sup>, day of September, 2001, she served a copy of the attached

DEFENDANTS' BRIEF IN SUPPORT  
OF THEIR MOTION TO DEPOSE PLAINTIFF

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

ADDRESSEE:

John Charles Kenney  
Reg. No. 05238-041  
U.S. Penitentiary  
P.O. Box 3000  
White Deer, PA 17887

Michele E. Lincalis  
MICHELE E. LINCALIS  
Paralegal Specialist